

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN HEFFERNAN,

Plaintiff,

-against-

FRANK G. STRAUB, individually, and in his capacity as
Commission of Public Safety for the City of White Plains,
N.Y., RICHARD LYMAN, individually, and in his
capacity as Chief of the City of White Plains Fire Bureau,
Department of Public Safety, RICHARD HOULIHAN,
individually, and in his capacity as Deputy Chief, White
Plains Fire Bureau, Department of Public Safety,
VINCENT ROBERTO, individually and in his capacity as
Deputy Fire Chief, White Plains Fire Bureau, Department
of Public Safety and the CITY OF WHITE PLAINS, New
York,

Defendants.
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Case No. 07 CV 11260 (WCC)

AFFIRMATION OF IVAN D.
SMITH IN SUPPORT OF
MOTION TO DISMISS

IVAN D. SMITH, ESQ., an attorney duly admitted to practice law in the courts of this
State and this Federal District, affirms pursuant to 28 U.S.C. § 1746, under penalties of perjury,
that the following is true and accurate to the best of my knowledge and belief:

1. I am a partner with the law firm of Lewis Brisbois Bisgaard & Smith, LLP,
attorneys for the Defendants herein. I submit this Affirmation in Support of Defendant's Motion
to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;

2. Annexed hereto as Exhibit "A" is a copy of the Complaint in this matter;

3. Annexed hereto as Exhibit "B" is a copy of the transcript of the radio transmission
of April 20, 2005;

4. Annexed hereto as Exhibit "C" is a copy of the Inter-Office Memorandum dated
April 20, 2005, from Lt. K. Heffernan to Chief Lyman.

5. Annexed hereto as Exhibit "D" is a copy of the Job Specification for Fire Lieutenant for the City of White Plains, effective November 2004;

6. Annexed hereto as Exhibit "E" is a copy of Section 129 of the Rules and Regulations for the Government of Officers and Members of the Bureau of Fire Department of Public Safety, City of White Plains; and

7. Annexed hereto as Exhibit "F" is a copy of the Amended Hearing Officer's Report and Recommendation dated April 23, 2007, in the matter of Frank G. Straub against Lieutenant Kevin Heffernan.

Dated: New York, New York
March 19, 2008

LEWIS BRISBOIS BISGAARD & SMITH, LLP

i/s

Ivan D. Smith (IS-2659)
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